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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,285	10/20/2003	Triveni P. Shukla	00030-001	3161

7590

02/15/2006

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,285

Applicant(s)

SHUKLA ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The amendment filed 2/17/05 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The insertions on page 2 starting at line 29 of " The dietary fiber gels are produced by eharing agricultural-by-rproducts, such as seed brans, hull and so forth under alkaline conditions. " Dietary fiber gel can include insoluble dietary fiber that can exist in the hydrated form as a gel or in the dehydrated form as flakes or powders" and " A physically smooth morphology is readily revealed under electron microscopic magnification of dietary fiber gel. Without being bound by any specific theory, it is believed that the smooth morphology reflects an amorphous nature of the insoluble compounds that constitute dietary fiber gel".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention,

Applicant claims bread, pancake, pancake mix and bread mix comprising an emulsified liquid shortening composition; the composition comprises dietary fiber gel. The gel is an essential element to the composition; however, the specification does not teach how to form the gel or how the gel is mixed with water and lipid to form the emulsified liquid shortening composition. How much water and lipid are needed? What kind of lipid can be used? There is no disclosure of how the gel is made and how the

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shortening composition is made. There is disclosure of what pancake and bread formulation or dough to use. The products as claimed are not enabling by the specification because there is no teaching of how to make the products.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al in view of Stone for the same reason set forth in the previous office action.

In the response filed 2/17/05, applicant states Patent no 5766622 was incorporated by reference into the original as-filed application. This statement is not accurate because a mere reference to the patent is not an incorporation of that reference into the original as filed application.

In the response filed 2/17/05, applicant argues Young teaches soluble fiber while the claimed invention comprises insoluble dietary fiber gel. This argument is not persuasive because it is not commensurate in scope with the claims. The claims do not specify that the fiber is insoluble. The claims require an emulsified liquid shortening comprising dietary fiber gel and this is what Young discloses. Furthermore, Young discloses that konjac is used in combination with microcrystalline cellulose which is an insoluble fiber. Thus, even if the claims recite an insoluble fiber, it still does not define over Young et al. Applicant's argument about lacking suggestion to combine and reasonable expectation of success is unclear because the rejection does not suggest modifying the Young et al teaching. The Stone reference is simply used to show that konjac is a fiber; thus, the Yong et al composition comprises dietary fiber gel. The argument about alkaline treatment is not germane to the issue because the claims do not have any limitation on alkaline treatment.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408.

The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 8, 2006


LIEN TRAN
PRIMARY EXAMINER
